



2.1 *DISCOM shall accept and purchase 3 MW of power made available by the Generating Plant's Spent wash & Bagasse based generation at average pooled power purchase cost of UPPCL for the FY 2017-18 fixed for the whole tenure of the PPA i.e. 10 (Ten) years as mutually agreed by both the parties (Consent of seller is collectively hereto annexed as ANNEXURE XI)."*

3.5 UPPCL arbitrarily and capriciously on 28.08.2020 issued a letter to the Petitioner inter-alia directing the Petitioner to revise its invoices to the APPC of Rs. 3.51 per kWh, violating the finding of this Commission rendered in the Tariff Order dated 30.11.2017. The Commission in its True Up Order dated 03.09.2019 passed in Petition No. 1449 of 2019 & Batch has affirmed the APPC at Rs. 3.86 Per Unit for FY 2017-2018.

Record of Proceedings

4. The Commission vide order dated 06.10.2020 directed UPPCL to release payments @Rs. 3.51 per unit i.e. the agreed rate within 15 days of receiving the revised bills by the Petitioner, thus dispensing with the interim prayer. During the next hearing on 4th Nov 20, the Commission allowed Petitioner to file rejoinder to UPPCL reply dated 02.11.2020. The Petitioner has filed its rejoinder dated 18.11.2020.
5. The Commission vide order dated 10.02.21 directed UPPCL to submit APPC rate applicable to the Petitioner after deducting renewable energy sources. The Commission vide order dated 19.02.21 allowed the request of 15 days extension to UPPCL for submission of details. UPPCL submitted its reply dated 06.03.21. The Commission vide order dated 12.03.21 allowed Petitioner to file rejoinder. UPPCL filed its reply on 19.03.21 and 31.03.21. The Petitioner filed its rejoinder dated 05.10.2021.
6. The next hearing scheduled on 6th April 21 could not be held owing to 2nd wave of Covid pandemic. The Commission during the subsequent hearing on 28.09.21 allowed request of the Partitioner to file rejoinder in two weeks. The next hearing in the matter was held on 30.11.2021, wherein Petitioner against sought time to file written submission whereas UPPCL submitted that they have filed necessary submission. The Petitioner has filed its written submission dated 09.02.2022. The hearing in the matter was concluded on 10.02.2022.

UPPCL reply dated 02.11.2020:

7. UPPCL vide its reply dated 02.11.2020 has submitted the following:
 - (a) The Petitioner has erred in raising the invoices at the rate of Rs. 3.87/ unit, which forms the part of the present dispute, as the Petitioner has wrongly relied upon the Tariff Order dated 30.11.2017.



- (b) The rate of Rs. 3.87/ Unit at which the Petitioner has billed and the raised its invoices is incorrect in terms of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2010 ("REC Regulations, 2010"). REC Regulations, 2010 provides that rate of Supply of power from the plant of an eligible generation company shall be the rate determined as "weighted average pooled price" of power purchase of the distribution licensee from the sources excluding those sources base on renewable energy sources.
- (c) The Respondent vide its Reply has stated that the correct weighted average poled price is Rs. 3.51/ Unit and not Rs. 3.87/ Unit.
- (d) Central Electricity Regulatory Commission vide its Order dated 11.04.2018 in Petition No. 4/SM/2018 has determined the APPC ("APPC Order") without considering Transmission Charges therefore, the rate of Rs. 3.51/- arrived at by UPPCL is based on REC Regulations, 2010 and the APPC Order.
- (e) The APPC determined by this Commission vide its Tariff Order passed in Petition No. 1203 of 2017 and batch matters, includes the cost of power purchased from cogeneration and other RE based Plants and as such the average power purchase price determined as Rs. 3.87/- cannot be considered as "weighted average poled price" as defined under Regulation 5 REC Regulations 2010 r/w the APPC Order

DCM Sriram's rejoinder dated 23.11.2020:

8. The Petitioner has submitted its counter argument as following:
- (a) The Act as well as the REC Regulations, 2010 unequivocally mandate that the APPC is to be determined by this Commission. The Respondent Utility cannot partake statutory functions to be discharged by this Commission and seek to determine its own APPC.
- (b) UPPCL is making payment at much lower tariff than APPC, thereby violating the Commission's order.
- (c) In case, the Commission is to consider plea of UPPCL, only the power sources from renewables generation is to be excluded.
- (d) UPPCL contention is that even the transmission charges are part of APPC and are to be excluded in terms of CERC REC Regulations, 2010. But CERC has excluded transmission charges only for the purpose of computation of tariff applicable to captive plants under Deviation Settlement Mechanism.

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9. UPPCL vide its reply dated 06.03.21 has submitted APPC rate @ Rs. 3.48 per unit, however, in the computation data points were not mentioned. These data points/sources were furnished on 19.03.21 and 31.03.21. UPPCL has contended that the rate of Rs. 3.87 per unit has been computed in ARR order of 2017-18 based on power purchase projections without inter/intra state transmission charges, LPS and rebate. Based on the same methodology, the rate as per audited accounts works out to Rs. 3.48 per unit.

UPPCL reply dated 19.03.21 and 31.03.2021:

10. UPPCL vide its reply dated 19.03.2021 has submitted power purchase summary details for the FY 2017-18 with net power purchase cost of Rs. 3.48/unit excluding renewable power. UPPCL also submitted that the Commission has not considered any cost on account of Interstate Transmission charges, intra state transmission charges, late payment surcharge and rebate. UPPCL vide affidavit dated 31.03.21 has filed revised details of power purchase summary with net power purchase cost of Rs. 3.48/unit excluding renewable power.

DCM Sriram's rejoinder dated 05.10.2021:

11. The Petitioner vide its reply has submitted that
- (a) Regulations 5(3) of the REC Regulations, 2010 only excludes renewable energy sources of energy while computing APPC and does not envisage inclusion of Transmission charges.
 - (b) UPPCL has computed data as per books and not as per methodology adopted by the Commission. The APPC for 2017-18 is to be arrived at considering the figures for 2016-17.
 - (c) UPPCL has proceeded to consider the figures/rates for FY 2017-18 while computing APPC for 2017-18 whereas the APPC for 2017-18 is to be arrived at considering the figures of 2016-17. The Petitioner has referred to the Commission's order dated 01.08.2016 in Petition No. 1063 of 2015. The weighted average pooled cost of power has been stated to be Rs. 3.81 per unit.

Commission's analysis and decision

12. The Petitioner signed a PPA dated 19-2-2018 for sale of 3 MW power from "spent wash and bagasse" based plant situated at Hariawan. The tariff for sale of power is agreed under Article 2.1 of PPA, according to which, DISCOM shall accept, and purchase 3 MW of power made available by the generating plant at "average pooled power purchase cost" (herein after called APPC) of UPPCL for year 2017-18 fixed for the whole 10-year tenure of the PPA.